

CHAPTER 4 CODE HEARING DEPARTMENT

- 4.01 Purpose
- 4.02 Code Hearing Department Established
- 4.03 Hearing Officer
- 4.04 Instituting Code Hearing Provisions
- 4.05 Subpoenas
- 4.06 Continuances
- 4.07 Hearing and Evidence
- 4.08 Findings, Decision and Order
- 4.09 Debt Due to Village
- 4.10 Defenses to Code Violations
- 4.11 Sanctions Applicable to the Owner and Property
- 4.12 Review Under Administrative Review Law

4.01 PURPOSE

The purpose of this Chapter is to expedite the prosecution and correction of Bull Valley Municipal Code (“Code”) violations in a fair and efficient manner as may be allowed by law and directed by ordinances through an administrative adjudication of violation of Village ordinances and establish a schedule of fines and penalties, and authority and procedures for the collection of unpaid fines and penalties.

1. 65 ILCS 5/1-2.1-1 *et seq.*, Code Hearing Departments, which authorizes a non-home rule municipality to create and implement a system of administration adjudications for Code violations that is otherwise applicable to municipalities that are home rule units;
2. 65 ILCS 5/11-31.1-1 *et seq.*, Building Code Violations, which authorizes a municipality to adopt a code hearing department for building code violations;
3. 625 ILCS 5/11-208.3, Administrative Adjudication of Violations of Traffic Regulations Concerning the Standing, Parking or Conditions of Vehicles and Automated Traffic Law Violations, which authorizes a municipality to create and implement a system of administrative adjudication of violations of traffic regulations concerning the standing, parking or condition of vehicles;
4. 625 ILCS 5/11-208.6, Automated Traffic Law Enforcement; and
5. 625 ILCS 5/11-1201.1, Automated Railroad Crossing Enforcement System.

All authority granted to the Village under said statutes is implemented as provided in the provisions of this Chapter and this Code.

4.02 CODE HEARING DEPARTMENT ESTABLISHED

A Code Hearing Department (“Department”) is hereby established which has the power to enforce compliance with all Village ordinances except for any reportable offense under 625 ILCS 5/6-204

and traffic regulations governing the movement of vehicles and prohibited from local adjudication under 65 ILCS 5/1-2.2-5 other than a notice of violation pursuant to an automated traffic law enforcement system, which shall be enforced pursuant to this Chapter and other applicable Chapters of this Code.

The establishment of the Department does not preclude the Village from using any legal system or other method to enforce Village ordinances.

The Administrator or designee shall be in charge of the operations of the Department. The Administrator's duties shall include scheduling hearings, processing notices and collecting monies paid for fines and penalties assessed after a determination of liability.

4.03 HEARING OFFICER

A. The position of hearing officer is hereby established. Every hearing officer must be an attorney licensed to practice law in the State of Illinois for at least three years and shall comply with the requirements of subsection (B) herein.

B. Qualifications of Hearing Officer: Prior to conducting proceedings under this Chapter, the hearing officer shall successfully complete a formal training program that includes the following:

1. Instruction on the rules of procedure of the hearing that they will conduct;
2. Orientation to each subject area of the code violations that they will administer;
3. Observation of administrative hearings; and
4. Participation in hypothetical cases, including rules on evidence and issuing final orders.

C. Any person seeking to be appointed as a hearing officer for the Village must present evidence of his or her compliance with this section to the corporate authorities of the Village, in such form as deemed appropriate by the corporate authorities of the Village.

D. A person who has served as a judge in Illinois is not required to fulfill the requirements of subsection (B) herein.

E. Duties of Hearing Officer: The hearing officer shall have all powers necessary to conduct fair and impartial hearings including, but not limited to, the power to:

1. Hold conferences for the settlement or simplification of the issues;
2. Administer oaths and affirmations;
3. Hear testimony and receive relevant evidence;

4. Issue subpoenas;
5. Rule upon motions, objections and the admissibility of evidence;
6. At the request of any party or on the administrative hearing officer's own motion, subpoena the attendance of relevant witnesses and the production of relevant books, records or other information;
7. Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
8. Regulate the course of the hearing in accordance with this Chapter, or other applicable law;
9. Issue a final order which includes findings of fact and conclusions of law regarding whether or not a code violation exists; and
10. Impose penalties consistent with applicable provisions of the Code and assess costs upon finding a party liable for the charged violation, except, however, that in no event shall the hearing officer have authority to (i) impose a penalty of incarceration; or, (ii) impose a fine either in excess of \$50,000, or such other amount not to exceed the maximum amount established by the mandatory arbitration system as prescribed by the rules of the Illinois Supreme Court from time to time for the judicial circuit in which the Village is located. Any such fine imposed under this Chapter shall be exclusive of costs of enforcement or costs imposed to secure compliance with the Code and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the Village.

4.04 INSTITUTING CODE HEARING PROVISIONS

A. When a police officer, building inspector, code enforcement officer or other individual authorized to issue a Code violation finds that a Code violation exists, that individual shall note the violation on a multiple copy violation notice, report and hearing notice that indicates:

1. The name and address of the defendant;
2. The type and nature of the violation including a reference to the appropriate section of the Code and potential penalties that may result;
3. The date and time the violation was observed;
4. The names of witnesses to the violation;
5. In the event of a building code violation, the address of the structure or premises where the violation is observed;

6. The means by which the defendant may waive the right to a hearing and pay the applicable fine for the violation;
7. The time, date and location of the hearing; and
8. Penalties which may occur if the defendant fails to appear.

B. For the purpose of a Code violation relating to real property, the property owner shall be prima facie responsible for a violation that occurs on such property and subject to the penalty therefore. For violations relating to motor vehicles, the owner or operator of said vehicle shall be prima facie responsible for a violation that occurs.

C. In the case of a building code violation, the violation report shall be forwarded to the Department and a docket number shall be assigned and stamped on all copies of the report and a hearing date shall be noted on the form. The hearing date shall not be less than 30 or more than 40 days after the violation is reported.

D. In the case of a building code violation, one copy of the violation report shall be maintained in the files of the Department and shall become part of the record of the hearing. One copy of the report shall be returned to the individual representing the Village and one copy of the report shall be served by first class mail to the owner of the structure or premises, along with a summons commanding the owner to appear at the hearing. If the name of the owner of the structure or premises cannot be ascertained or if service cannot be made by mail, service may be made on the owner by posting, nailing or substantially affixing a copy of the violation report form on the front door of the structure or premises where the violation is found, not less than 20 days before the hearing is scheduled.

E. Parties to a violation notice for an alleged Code violation, excluding building codes, shall be served with process in a manner reasonably calculated to give actual notice. For the purposes of this chapter, “a manner reasonably calculated to give actual notice” shall mean, as appropriate, personal service of process upon a party, its employee or its agent; service by first-class mail at a party’s address; or notice that is posted upon the property where the alleged Code violation is found when the party is the owner or manager of the property. If the Village requires the party to respond to the complaint within a specified amount of time, the Village shall file a reply with the code hearing unit within the same amount of time afforded to the party responding to the complaint.

F. Adjudicatory hearings for an alleged Code violation, excluding building codes, shall be scheduled with reasonable promptness, provided that for adjudicatory hearings scheduled in all non-emergency situations, if requested by the defendant, the defendant shall have at least 15 days after service of process to prepare for an adjudicatory hearing. If service is provided by mail, the 15-day period shall begin to run on the day that the notice is deposited in the mail.

4.05 SUBPOENAS

At any time prior to the hearing date, the hearing officer assigned to the case may, at the request of either party, direct witnesses to appear and give testimony at the hearing. If the defendant or the

defendant's attorney fails to appear on the specified hearing date, the hearing officer may find the defendant in default and shall proceed with the hearing and accept evidence relevant to the existence of a Code violation.

4.06 CONTINUANCES

No continuances shall be authorized by the hearing officer in proceedings under this Chapter except in cases where a continuance is absolutely necessary to protect the rights of the alleged violator. Lack of preparation shall not be grounds for a continuance. Inconvenience or nonattendance at work shall not be grounds for a continuance. Any continuance authorized by the hearing officer under this Chapter shall not exceed the next scheduled date for the hearing officer to hear Village cases.

4.07 HEARING AND EVIDENCE

A. At the hearing, the hearing officer shall preside, shall hear testimony and shall accept any evidence relevant to the existence or nonexistence of a Code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter.

B. The case for the Village may be presented by an employee designated by the President or by an employee of the Building Department or Police Department. The case for the Village shall not be presented by an employee of the Ordinance Enforcement Department. The case for the alleged violator may be presented by the alleged violator, his or her attorney or any other agent or representative of the defendant.

C. Nonresidents may, in lieu of presenting testimony in person provide written testimony under oath and duly notarized, which testimony shall be accepted by the hearing officer if received before the hearing date.

D. If on the date set for hearing the alleged violator or his or her attorney fails to appear or present evidence, the hearing officer may find the alleged violator in default and shall proceed with the hearing and accept evidence relevant to the existence of a code violation.

E. Upon finding the alleged violator in default, the Administrator shall send or cause to be sent notices by first class mail, postage prepaid to the violator who received the notice of an ordinance violation; or, in the case of a violation of the automated traffic control system, the registered owner or operator of the cited vehicle at the address as recorded with the Secretary of State, and shall be sent to the lessee of the cited vehicle at the address last known to the lessee of the cited vehicle at the time of the lease. Service of notices sent in accordance herewith shall be complete as of the date of deposit in the United States mail.

4.08 FINDINGS, DECISION AND ORDER

A. Determination by Hearing Officer: At the conclusion of the hearing, the hearing officer shall make a determination on the basis of the evidence presented at the hearing as to

whether or not a code violation exists. The determination shall be in writing and shall be designated as the findings, decision and order. The findings, decision and order shall include:

1. The hearing officer's findings of fact;
2. A decision of whether or not a code violation exists based upon the findings of fact;
3. An order that states the sanction or dismisses the case if a violation is not proven; and
4. A monetary sanction and/or any other sanction for a violation under this Chapter including fees and costs.

B. A finding of liable, after evidence is heard by the hearing officer, may result in assessment of court costs of \$100.00, in addition to any fines or sanctions imposed by the hearing officer.

C. Copy of Findings: A copy of the findings, decision and order shall be served on the violator within five days after it is issued. Service of the findings, decision and order shall be by first class mail as provided for instituting code hearing proceedings. Payment of any penalty or fine and the disposition of fine money shall be in the same manner as set forth in this Code.

D. Any fine, other sanction or costs imposed, or part of any fine, other sanction or costs imposed, remaining unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures under the Administrative Review Law shall be a debt due and owing the Village and, as such, may be collected in accordance with applicable law.

E. After expiration of the period within which judicial review under the Administrative Review Law may be sought for a final determination of the Code violation, unless stayed by a court of competent jurisdiction, the findings, decision, and order of the hearing officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

F. In any case in which a defendant has failed to comply with a judgment ordering a defendant to correct a Code violation or imposing any fine or other sanction as a result of a Code violation, any expenses incurred by a Village to enforce the judgment, including, but not limited to, attorney's fees, court costs and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or a hearing officer, shall be a debt due and owing the Village and may be collected in accordance with applicable law. Prior to any expenses being fixed by a hearing officer pursuant to this subsection, the Village shall provide notice to the defendant that states that the defendant shall appear at a hearing before the hearing officer to determine whether the defendant has failed to comply with the judgment. The notice shall set the date for such a hearing, which shall not be less than seven days from the date that notice is served. If notice is served by mail, the seven-day period shall begin to run on the date that the notice was deposited in the mail.

G. Upon being recorded in the manner required by Article XII of the Code of Civil Procedure, 735 ILCS 5/12-101 *et seq.*, or by the Uniform Commercial Code, 810 ILCS 5/1-101 *et seq.*, a lien shall be imposed on the real estate or personal estate, or both, of the defendant in the amount of any debt due and owing the Village under this Chapter. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.

H. Debt Due to Village: The fines, penalties, fees and costs contained in an order of the hearing officer are a debt due and owing the Village and said total must be paid within 30 days of the date the order is issued by the hearing officer.

I. Final Orders: The order of the hearing officer becomes final 30 days following entry of the order or 30 days from a denial of a timely filed petition to set aside the hearing officer's decision, whichever occurs last. All fines and other monies paid to the Village in accordance with this Section shall be remitted to the Village and deposited in the appropriate Village account as designated by Section 3.03 of this Code.

J. Petition to Set Aside Default Judgment: A hearing officer may set aside any judgment entered by default and set a new hearing date, upon a petition filed within 21 days after the issuance of the order of default, if the hearing officer determines that the defendant's failure to appear at the adjudicatory hearing was for good cause or at any time if the defendant establishes that the Village did not provide proper service of process. If any judgment is set aside pursuant to this subsection, the hearing officer shall have the authority to enter an order extinguishing any lien which has been recorded for any debt due and owing the Village as a result of the vacated default judgment.

K. Violations of Orders: Any person, having received notice and an opportunity for a hearing as provided in this Chapter who knowingly fails to comply with an order issued by an hearing officer under this Chapter, including the issuance of a subpoena, shall, if the order is not stayed by a court of competent jurisdiction prior to its effective date, be guilty of contempt. Contempt shall be punishable by a fine not to exceed \$250.00. Each day that the violation continues shall be considered a separate and distinct offense. In a prosecution under this Section, it shall not be a defense that a person came into compliance with an order, sought judicial review of it or made efforts to comply with an order, subsequent to its effective date.

4.09 DEBT DUE TO VILLAGE

Any order to comply, or for a fine, other sanction or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid or uncompleted after the exhaustion of, or the failure to exhaust, judicial review procedures under the Administrative Review Law shall be a debt due and owing the Village and, as such, may be collected and enforced in accordance with applicable law.

4.10 DEFENSES TO CODE VIOLATIONS

It shall be a defense to a building code violation charged if the owner, the owner's attorney or any other agent or representative proves to the hearing officer's satisfaction that:

1. The code violation alleged in the notice does not in fact exist, or at the time of the hearing the violation has been remedied or removed;
2. The code violation has been caused by the current property occupants and that in spite of reasonable attempts by the owner to maintain the structure or premises free of such violation, the current occupants continue to cause the violations; or
3. An occupant or resident of the structure or premises has refused entry to the owner or the owner's agent to all or part of the structure or premises for the purpose of correcting the code violation.

4.11 SANCTIONS APPLICABLE TO THE OWNER AND PROPERTY

The order to correct a zoning or building code violation and the sanctions imposed by the Village as the result of a finding of a zoning or building code violation shall attach to the property as well as to the owner of the property, so that a finding of a code violation against one owner cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of property takes ownership of the property subject to the findings, decision and order of the hearing officer under this Chapter.

4.12 REVIEW UNDER ADMINISTRATIVE REVIEW LAW

Any Final Administrative Decision by a Code Hearing Unit, that a Code violation does or does not exist, shall constitute a final determination for purposes of judicial review and shall be subject to review under the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*